

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: King and Chapman      Confirmation No. 4275  
Serial No.: 10/731,759      Art Unit: 1643  
Filing Date: December 8, 2003      Examiner: Hong Sang  
For: MONOVALENT ANTIBODY FRAGMENTS  
Customer No.: 34132

Via EFS Web  
Date: March 26, 2010

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY BRIEF UNDER 37 CFR § 41.41**

Dear Sir:

This Reply Brief is being filed in reply to the Examiner's Answer dated as mailed January 29, 2010. As it is being filed before March 29, 2010, it is timely.

Preliminarily, Appellants note with appreciation the offices acknowledgement that the Appeal Brief submitted was complete and the representations are correct.

The Office maintained the rejection of claims 11-16 under 35 U.S.C. 103(a) as allegedly being unpatentable over Zapata et al. (FASEB J. 1995. 9:a1479) in view of Griffiths et al. (U.S. Patent 5,670,132). In response to Appellants' arguments regarding the deficiencies of Griffiths et al., the Office argues that one cannot attack references individually where rejections are based on combinations of references. Astoundingly, the Office asserts that Griffiths et al. is just a secondary reference, so arguments that it teaches away are not persuasive. Notably, the Office cites no case law in support of its position. The Office does not get to dismiss a teaching away by arguing that the reference is merely secondary. All references must be considered in their entirety, including disclosures that teach away [*W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)].

Appellants note, however, that the Office has relied upon a section of Griffiths et al. regarding the radiolabelling of *divalent* antibody fragments to support the argument that the radiolabel can be attached at different locations. The claims on appeal recite "monovalent" antibody fragments. Thus, the Office's argument fails.

Finally, the Office incorrectly asserts that Griffiths et al. teaches using MePEG of 20,000-30,000 molecular weight. It does not. Notably, the Office did not support its assertion with a citation.

The Office additionally argues that Griffiths et al. doesn't teach away because Griffiths et al. teaches that the radioisotope can be coupled to PEG antibody fragments at more than one cite.

**CONCLUSION**

Appellants request that all rejections be withdrawn and that all claims be allowed.

Respectfully submitted,

/Doreen Yatko Trujillo/

Dated: March 26, 2010

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